IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

TESSERA ADVANCED TECHNOLOGIES, INC.,

Civil Action No. 2:17-cv-671-JRG

Plaintiff,

FILED UNDER SEAL

v.

JURY TRIAL DEMANDED

SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants.

TESSERA ADVANCED TECHNOLOGIES, INC.'S SUR-REPLY TO DEFENDANTS' MOTION TO TRANSFER UNDER 28 U.S.C. § 1404(a)

This Court's threshold inquiry is to dete	rmine whether the forum-selection clause applies.
Samsung argues that this case should be transfe	erred because
Second, it is not even true that	
	Tessera has done nothing more, as its Amended
Complaint confirms.	

At bottom, all of Samsung's arguments are nothing more than an
attempt to "manufacture a contract dispute simply as a means to import the forum-selection clause
into the case." Indus. Print Techs. LLC v. Canon U.S.A., Inc., Case No. 2:14-cv-00019, 2014 WL
7240050, at *5 (E.D. Tex. Dec. 19, 2014).
Accordingly, Samsung's motion should be denied.
Samsung's only argument for meeting the threshold requirement—that this case could have
been brought in Delaware—is that, based
Samsung's cited cases regarding the

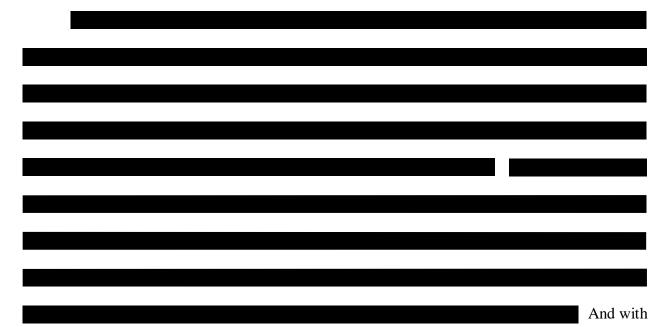
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This
argument is as brazen as it is futile.
Any such future dispute is not ripe, and there presently is
no dispute whatsoever. IPS Corp. v. WCM Indus., Inc., No. 2:12-cv-02694-JMP-tmp, 2013 WL
1338179, at *19-20 (W.D. Tenn. Mar. 29, 2013) (refusing to apply forum-selection clause based
on potential future claims of breach); cf. Lower Colo. River Auth. v. Papalote Creek II, L.L.C., 858
F.3d 916, 921 (5th Cir. 2017) (refusing to enforce arbitration clause because dispute was not ripe).
In sum, Samsung has not identified any
, let alone a non-frivolous one.
, let alone a non-involous one.

II. PUBLIC AND PRIVATE INTEREST FACTORS WEIGH AGAINST TRANSFER

As Samsung cannot satisfy the threshold requirement for transfer, there is no need to consider the public or private interest factors. Nevertheless, here both the public and private interest factors weigh against transfer. The Delaware district is understaffed and congested. There is no indication the Delaware judicial nominees will be confirmed any time soon. And regardless

of whether and when the nominees are confirmed, the fact remains that schedules in Delaware are slower than this district. (Resp. at 13.) Nor does Samsung's attempt to highlight Delaware as a state of incorporation trump that the only physical presence by the parties in either district is SEA in this district. *See, e.g., Comcast Cable Commc'ns, LLC v. British Telecomms. PLC*, No. 3:12-cv-1712, 2012 WL 6625359, at *5 (N.D. Tex. Dec. 20, 2012) (finding that local interest factor weighs against transfer because even though multiple parties were Delaware corporations, none had an office in Delaware, while one had a physical presence in the district). Thus, the public interest factors also weigh against transfer.



respect to SAS, under Rule 45(c)(1)(B), this Court does have subpoen power to compel SAS's witnesses to come to trial. Finally, Samsung is incorrect that the case has just begun; each side has already produced thousands of pages and the case is well underway. (Resp. at 12.) On balance, the private interest factors weigh against transfer, and certainly do not establish that it would be clearly more convenient to litigate in Delaware.

III. CONCLUSION

For the foregoing reasons, Samsung's motion should be denied.

Respectfully submitted,

Dated: March 2, 2018

s/Lawrence J. Gotts w/permission Claire Henry

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in

compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who

are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed.

R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have

consented to electronic service were served with a true and correct copy of the foregoing by email

on this the 2nd day of March, 2018.

/s/ Claire Henry

Claire Henry

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

This is to certify that the above document should be filed under seal because it contains

material designated by the parties as confidential pursuant to the Stipulated Protective Order

entered in this case (Dkt. 56).

/s/ Claire Henry

Claire Henry